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Paper No. 12

Gary D. Yacura
P.O. Box 8910
Reston VA 20195

In re Application of
Olga BORIC - LUBECKE
Application No. 09/514,243
Filed: February 28, 2000
Attorney Docket No. 29250-000359/US

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JUN 07 2004

OFFICE OF PETITIONS

**DECISION
ON PETITION
37 CFR 1.137(b)**

This is a decision on the petition under 37 CFR 1.137(b), filed March 2, 2004, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item (1), for the reason detailed below.

The application became abandoned for failure to file a reply within the meaning of 37 CFR 1.113 to the final rejection of May 28, 2003, within the time period for reply. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and fee required by law), an amendment under 37 CFR 1.116 that cancels all the rejected claims or otherwise *prima facie* places the application in condition for allowance; a Request for Continued Examination (RCE), along with the required fee and submission in accordance with 37 CFR 1.114, or the filing of a continuing application pursuant to the provisions of 37 CFR 1.53(b). Since the amendment submitted does not *prima facie* place the application in condition for allowance (see attached Advisory Action), petitioner must submit the reply required to continue prosecution in order to effect revival of the instant application.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Ehud Gartenberg at (703) 305-4066 or, in his absence, to the undersigned at (703) 308-3865.


BethAnne Dayoan
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Attachment: Copy of Advisory Action